

1 BERNSTEIN LITOWITZ BERGER
2 & GROSSMANN LLP
3 DAVID R. STICKNEY (Bar No. 188574)
NIKI L. MENDOZA (Bar No. 214646)
MATTHEW P. SIBEN (Bar No. 223279)
TAKEO A. KELLAR (Bar No. 234470)
12481 High Bluff Drive, Suite 300
San Diego, CA 92130
Tel: (858) 793-0070
Fax: (858) 793-0323
davids@blbglaw.com
nikim@blbglaw.com
matthews@blbglaw.com
takeok@blbglaw.com

8 -and-

9 CHAD JOHNSON
1285 Avenue of the Americas, 38th Floor
New York, NY 10019
10 Tel: (212) 554-1400
Fax: (212) 554-1444
11 chad@blbglaw.com

12 Attorneys for Lead Plaintiff Teachers' Retirement
System of Oklahoma and Lead Counsel to the Class
13

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION

17 In re CONNETICS SECURITIES
LITIGATION

Case No. C 07-02940 SI

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19 **LEAD PLAINTIFF'S NOTICE OF
SUPPLEMENTAL AUTHORITY**
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1 Pursuant to Local Civil Rule 7.3(d), Lead Plaintiff Teachers' Retirement System of
 2 Oklahoma ("Lead Plaintiff") respectfully submits without argument the attached Memorandum
 3 and Order in the action styled *Gargiulo v. Isolagen, Inc.*, 2:05 CV 04983 RB, 2007 WL 2791827
 4 (E.D. Pa. Sept. 26, 2007), for the Court's consideration in ruling upon defendants' motions for
 5 dismissal. *Gargiulo* was published after Lead Plaintiff submitted its opposition briefing to the
 6 motions for dismissal and Lead Plaintiff is filing this Notice prior to defendants' filing of reply
 7 papers. *Gargiulo* further supports the arguments in Lead Plaintiff's Opposition to the Connetics'
 8 Motion to Dismiss [Dkt. 45] at 13-14 (addressing defendants' contention that "courts have
 9 dismissed securities fraud claims based on a defendant's alleged failure to disclose adverse test
 10 results relating to a new drug where (as here) reasonable minds could differ on the significance
 11 of the results." Connetics' Motion to Dismiss [Dkt. 22] at 19, n.14). In this regard, the *Gargiulo*
 12 court held:

13 [I]t is not appropriate at this stage in the pleadings to dismiss based on the
 14 importance, or lack thereof, of the product development information. As the
 15 Third Circuit pointed out in *In re Adams Golf, Inc.* 381 F.3d 267, 274-275 (3d Cir.
 16 2004): "Materiality is ordinarily an issue left to the factfinder and is therefore not
 17 typically a matter for Rule 12(b)(6) dismissal." Furthermore, dismissal on the
 18 basis of the materiality of the product development information would only be
 19 appropriate "if the alleged misrepresentations or omissions are so obviously
 20 unimportant to an investor that reasonable minds cannot differ on the question of
 21 materiality . . ." *Shapiro v. UJB Financial Corp.*, 964 F.2d 272, 281 n.11 (3d
 22 Cir. 1992).

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 19 *Gargiulo*, 2007 WL 2791827, at *6.

20 Dated: October 1, 2007

Respectfully submitted,

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 22 BERNSTEIN LITOWITZ BERGER
 & GROSSMANN LLP

23
 24 /s/ David R. Stickney
 DAVID R. STICKNEY

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 26 DAVID R. STICKNEY
 NIKI L. MENDOZA
 MATHEW P. SIBEN
 TAKEO A. KELLAR
 27 12481 High Bluff Drive, Suite 300
 San Diego, CA 92130
 Tel: (858) 793-0070
 28 Fax: (858) 793-0323

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CERTIFICATE OF SERVICE

I, Brandy M. Roberts, do hereby certify that on this 1st day of October, 2007, true and correct copies of the foregoing

- Lead Plaintiff's Notice of Supplemental Authority

wer filed electronically. Those attorneys who are registered with the Electronic Case Filing ("ECF") System may access this filing through the Court's system, and notice of this filing will be sent to the parties by operation of the Court's ECF System. Attorneys not registered with the Court's ECF system will be duly and properly served via facsimile and/or Federal Express (as indicated on the attached Service List), in accordance with the Federal Rules of Civil Procedure and the Court's Local Rules.

I further declare that, pursuant to Civil L.R. 23-2, on this date I served copies of the above documents on the Securities Class Action Clearinghouse by electronic mail through the following electronic mail address provided by the Securities Class Action Clearinghouse:

jcarlos@law.stanford.edu

/s/Brandy M. Roberts

Brandy M. Roberts

Service List

In re CONNETICS SECURITIES LITIGATION
Case No.: 07-02940

COUNSEL FOR CONSOLIDATED PLAINTIFF FISHBURY LIMITED	
Jean-Marc Zimmerman Eduard Korsinsky Pamela Lynam Mahon ZIMMERMAN, LEVI & KORSINSKY LLP 39 Broadway, Suite 1601 New York, NY 10006 Tel: 212-363-7500 Fax: 212-363-7171 ek@zlk.com jmzimmerman@zlk.com pmahon@zlk.com	
<i>Via ECF</i>	
COUNSEL FOR CONSOLIDATED PLAINTIFF BRUCE GALLANT	
Evan J. Smith BRODSKY & SMITH LLC 240 Mineola Blvd. Mineola, NY 11501 Tel: 516-741-4977	
<i>Via FedEx</i>	
COUNSEL FOR CONSOLIDATED PLAINTIFF MARCUS A. SEIGLE	
Catherine A. Torell COHEN MILSTEIN HAUSFELD & TOLL P.L.L.C 150 East 52 nd Street New York, NY 10022 Tel: 212-838-7797 Fax: 212-383-7745	
<i>Via FedEx</i>	

COUNSEL FOR DEFENDANTS CONNETICS CORPORATION, THOMAS G. WIGGANS, C. GREGORY VONTZ, JOHN HIGGINS, LINCOLN KROCHMAL, EUGENE A. BAUER, R. ANDREW ECKERT, CARL B. FELDBAUM, DENISE M. GILBERT, JOHN C. KANE, THOMAS D. KILEY, LEON E. PANETTA AND G. KIRK RAAB

<p>Susan S. Muck Dean S. Kristy Christopher J. Steskal Kalama M. Lui-Kwan Emily St. John Cohen FENWICK & WEST 275 Battery Street, Suite 1600 San Francisco, CA 94111 Tel: 415-875-2300 Fax: 415-281-1350 smuck@fenwick.com dkristy@fenwick.com csteskal@fenwick.com klui-kwan@fenwick.com ecohen@fenwick.com</p> <p><i>Via ECF</i></p>	<p>Gregory A. Markel CADWALADER, WICKERSHAM & TAFT LLP 1 World Financial Center New York, NY 10281 Tel: 212-504-6112 Fax: 212-504-6666 gregory.markel@cwt.com</p> <p><i>Via ECF</i></p>
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COUNSEL FOR DEFENDANT ALEXANDER J. YAROSHINSKY

<p>James P. Duffy IV DLA PIPER US LLP 1251 Avenue of the Americas New York, NY 10020 Tel: 212-335-4500 Fax: 212-504-6666 James.duffy@dlapiper.com</p> <p>Alysson Russell Snow DLA PIPER US LLP 401 B Street, Suite 1700 San Diego, CA 92101 Tel: 619-699-2858 Fax: 619-699-2701 Alysson.snow@dlapiper.com</p> <p><i>Via ECF</i></p>	
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Defendant Victor E. Zak	
Victor E. Zak (<i>pro se</i>) 24 Oakmont Road Newton, MA 02459 Tel: 617-610-2538 zakvic@yahoo.com <i>Via FedEx</i>	

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